IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

OP.No. 35533 of 2000(E)

PETITIONER:

K.MADHUSOODANAN,
JUNIOR ASSISTANT,
KERALA STATE CIVIL SUPPLIES CORPORATION,
ALAPPUZHA.

BY ADV. SRI.T.S.RADHAKRISHNA PILLAI
SRI.T.R.RAJEEV

RESPONDENTS:
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1. **THE SECRETARY TO GOVERNMENT AND THE CHAIRMAN,**
KERALA STATE CIVIL SUPPLIES CORPORATION FOOD
AND CIVIL SUPPLIES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. **THE MANAGING DIRECTOR,**
KERALA STATE CIVIL SUPPLIES CORPORATION,
MAVELI BHAVAN, GANDHI NAGAR, ERNAKULAM.

BY ADV. SRI.GEORGE POONTHOTTAM,SC, KSCSC
SRI.LAKSHMI NARAYAN, SC, SUPPLYCO
SMT. RANJINI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.60753/2000 IN O.P.35533/2000 E

DISMISSED

6/07/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF MEMO OF CHARGES E7.16987/88(3) DTD. 9/07/90 ISSUED BY 2ND RESPONDENT WITH STATEMENT OF ALLEGATION TO THE PETITIONER.**

EXT.P2: **COPY OF EXPLANATION SUBMITTED BY PETITIONER TO 2ND RESPONDENT.**

EXT.P3: **COPY OF PROCEEDINGS NO.E7, 16987/88 (4) DTD. 30/06/92 OF 2ND REPONDENT.**

EXT.P4: **COPY OF PROCEEDINGS NO.E7.16987/88 DTD. 8/10/99 OF 2ND RESPONDENT.**

EXT.P5: **COPY OF JUDGMENT IN O.P.30120/1999 I DTD. 19/06/2000 HIGH COURT OF KERALA.**

EXT.P6: **COPY OF APPEAL FILED BY PETITIONER BEFORE BOARD OF DIRECTORS K.S.C.S.C. DTD. NIL.**

EXT.P7: **COPY OF PROCEEDINGS E7.16987/88 DTD. 9/11/2000 ISSUED BY 1ST RESPONDENT.**

EXT.P8; **COPY OF PROCEEDINGS E3.15106/90 DTD. 8/11/90 OF 2ND RESPONDENT.**

/TRUE COPY/

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.35533 of 2000-E

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Dated this the 6th day of July, 2007.

JUDGMENT

The petitioner who, at that time, was governed by the Helpers' Service Rules and another similarly situated person were, going by the records, joint Custodians of Palmolien Oil along with a Senior Assistant in a Depot of the Civil Supplies Corporation. The Corporation found, on the basis of the books of accounts, in audit, that the entire stock of the material was not appropriately accounted and therefore, there was shortage. The Senior Assistant was a deputationist from the Civil Supplies Department. Action was taken against him under the relevant service laws. He took the defence that in terms of the custody given, the Helpers are also equally responsible for the shortage.

Proceedings against him concluded by fixing one half of the liability for the shortage on him. As regards the remaining one half, the petitioner and the other Helper who were joint Custodians along with the Senior Assistant, during two different laps, were saddled with proportionate responsibility.

2. Without going into the question as to whether the stock in the storage tank was, as a matter of fact, calibrated etc., it can be immediately noticed that the petitioner was not afforded an opportunity of personal hearing to place his case before the competent authority, though on the face of the files, it appears that some of his objections were adverted to. What gains importance is the question whether the liability to reimburse for shortage springs from the Helpers' Service Rules or from the fact that the petitioner was put in custody, though jointly with another, of the goods and was, in terms of the Office Orders, liable to account for the shortage. Still, the question would be whether every

shortage without reference to the question whether it is owing to negligence, neglect or breach of duties would visit an employee in the service of a public body, with liability. If it were so, it may tend to be harsh calling for a scrutiny in terms of Part III of the Constitution. But such a stage has not arisen, as of now, because, the petitioner was not given an opportunity of being heard.

In the aforesaid circumstances, the impugned proceedings against the petitioner are quashed and it is directed that the official respondents will afford the petitioner an opportunity of being heard and take a final decision within a period of three months from the date of receipt of a copy of this judgment. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.35533 of 2000-E

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JUDGMENT

Dated: 6th July, 2007.